



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Gary R. Sarozek,
Master Case No.: M2008-117251
Docket No.:
Document: Final Order

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld:

The identity of the complainant if the person is a consumer, health care provider, or employee, pursuant to RCW 43.70.075 (Identity of Whistleblower Protected) and/or the identity of a patient, pursuant to RCW 70.02.020 (Medical Records - Health Care Information Access and Disclosure)

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
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You may appeal the decision to withhold any information by writing to the Deputy Secretary, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
ADJUDICATIVE SERVICE UNIT**

In the Matter of:

GARY R. SAROZEK,
Credential No. MHC.LH.0007235,

Respondent.

Master Case No. M2008-117251

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL ORDER

APPEARANCES:

Gary R. Sarozek, Respondent, by
Helsell Fetterman LLP, per
Katharine W. Brindley, Attorney at Law

Department of Health Licensed Mental Health Counselor Program, by
Office of the Attorney General, per
Heather A. Carter, Assistant Attorney General

PRESIDING OFFICER: Theodora M. Mace, Health Law Judge

The Presiding Officer convened a hearing in this matter on May 27, 2009, in Kent, Washington, pursuant to a Statement of Charges issued by the Department of Health Licensed Mental Health Counselor Program (Program) alleging the Respondent, Gary R. Sarozek, violated RCW 18.130.180(1), (7), and (20); RCW 18.225.100; and RCW 18.225.105. Statement of Charges dismissed for all charges except violation of RCW 18.130.180(7) and RCW 18.225.100, for which the penalty of a \$100 fine is imposed.

ISSUES

- A. Did the Respondent commit unprofessional conduct as defined by RCW 18.130.180(1), (7), and (20); RCW 18.225.100; and RCW 18.225.105?

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL ORDER

Page 1 of 22

Master Case No. M2008-117251

- B. If the Program proves unprofessional conduct, what are the appropriate sanctions under RCW 18.130.160?

SUMMARY OF PROCEEDING

At the hearing, the Program presented the testimony of Susan J. Cummings, Health Care Investigator; and Client A. The Respondent presented the testimony of Gary R. Sarozek, the Respondent; Seth Ellner, Domestic Violence Consultant; Sandra Lowe, Vice-President of Community Services at Family Services; Rachel Griego, Family Services Program Assistant/Receptionist; Kristin Lunte; and Joan Zegree, Domestic Violence Consultant.

The Presiding Officer admitted the following Program exhibits:

- Exhibit P-1: Community Violence Prevention Services, Client Progress Report for Client A and signed by the Respondent, dated February 8, 2007.
- Exhibit P-2: Community Violence Prevention Services, Completion or Dismissal from Program for Client A and signed by the Respondent, dated February 8, 2007.
- Exhibit P-4: Community Violence Prevention Services, Authorization for Release of Information executed by Patient A regarding Kristin Lunte, dated January 4, 2007.
- Exhibit P-5: Redmond Police Department Incident Report No. 00-014275, dated August 7, 2000.
- Exhibit P-6: Community Violence Prevention Services, Confirmation of Intake Appointment, dated December 13, 2006.
- Exhibit P-7: Domestic Violence Intervention Program Form for Client A.
- Exhibit P-8: Community Violence Prevention Services, Respectful Parenting Program Questionnaire for Client A, dated January 13, 2006.

- Exhibit P-9: Parenting Intake Form for Client A and signed by the Respondent, dated January 4, 2007.
- Exhibit P-10: Client Intake Assessment Summary for Client A and completed by the Respondent, dated January 29, 2007.
- Exhibit P-11: Family Services Respectful Parenting Program Financial Agreement for Client A, dated December 13, 2006.
- Exhibit P-12: Community Violence Prevention Services letter, dated February 8, 2007, to Christine Lunte from the Respondent.
- Exhibit P-15: State of Washington Required Disclosure Statement signed by Client A and dated December 13, 2006.
- Exhibit P-16: Community Violence Prevention Services Collateral Contracts Form regarding Client A and completed by the Respondent.
- Exhibit P-17: Policies and Procedures – CVPS, Addendum #1, Parent's Program.

The Presiding officer admitted the following Respondent exhibits:

- Exhibit R-1: Domestic Violence Manual for Judges, Chapter 2.
- Exhibit R-2: Family Services Domestic Violence Intervention Program – Mission, Goals, Treatment Philosophy, Treatment Approach, Policies to Ensure Victim Safety.
- Exhibit R-3: Family Services Community Violence Prevention Services.
- Exhibit R-4: Men's Domestic Violence Intervention Program, p. 1.
- Exhibit R-5: DV Dads, p. 1.
- Exhibit R-6: Parent's Program, p. 1.
- Exhibit R-7: Intake Interview – Parent's Program, p. 1.
- Exhibit R-8: Respectful Parenting, p. 1.
- Exhibit R-9: WAC 388-60 – Domestic Violence Perpetrator Treatment Program Standards, pp. 1-25.

- Exhibit R-10: Family Services File – Client A:
- 10A: Confirmation of Intake Appointment, December 13, 2006.
 - 10B: DVIP Admission Form, December 13, 2006.
 - 10C: State of Washington Required Disclosure Statement, December 13, 2006.
 - 10D: Criminal History Report Authorization, December 13, 2006.
 - 10E: Family Services Respectful Parenting Program Financial Agreement, pp. 1-4, December 13, 2006.
 - 10F: Respectful Parenting Program Questionnaire, pp. 1-9, December 13, 2006.
 - 10G: Authorizations for Release of Information, pp. 1-7, January 4, 2007 - Robin Brooks; Family Court Services; Christine Ziegler; Kristin Lunte; Dr. Pepe; Supervised Visitation, Venice, FL; and Gina Landicho-Wickes.
 - 10H: Parenting Intake, pp. 1-8.
 - 10I: Lethality Assessment, January 4, 2007.
 - 10J: Behavior Checklist, pp. 1-3, January 4, 2007.
 - 10K: Criminal History Report, January 3, 2007.
 - 10L: Documents from Supervised Visitation, Venice, FL, pp. 1-17, January 23, 2007.
 - 10M: CVPS Collateral Contacts, January 31, 2007.
 - 10N: E-mail from Client A to Sarozek, pp. 1-2, January 5, 2007.
 - 10O: Twelfth Judicial Circuit, State of Florida, pp. 1-26, September 28, 2006 – Petition for Injunction for Protection Against Domestic Violence; Temporary Injunction for Protection Against Domestic Violence; and Final Judgment of Injunction for Protection Against Domestic Violence.
 - 10P: Declaration of the Respondent/Father, pp. 1-6, 2006.

- 10Q: June 2, 2004 Letter Attorney Timothy Knowling, pp. 1-9.
- 10R: April 5, 2004 and April 7, 2004 Letters from Attorney Natalie de Maar, pp. 1-2.
- 10S: Client Intake Assessment Summary, pp. 1-4, January 29, 2007.
- 10T: Completion or Dismissal from Program, February 8, 2007.
- 10U: Client Intake Assessment Summary, pp. 1-3, February 8, 2007.
- 10V: Letter Kristin Lunte, February 8, 2007.
- 10W: Letter Christine Ziegler, February 8, 2007.
- Exhibit R-11: Continuing Education Certificates, Gary Sarozek, pp. 1-22, dated 2004-2007.
- Exhibit R-12: Curriculum Vitae, Seth Ellner, MSW, LICSW.
- Exhibit R-13: Curriculum Vitae, Joan Zegree, MSW, LICSW.

I. FINDINGS OF FACT

1.1 The State of Washington granted the Respondent a credential to practice as a licensed mental health counselor on December 10, 2001. Prior to that, the Respondent held a Registered Counselor credential from 1998 to December 2001. The Respondent's mental health counselor credential is currently in good standing and he has never been subject to any past disciplinary action by the Department of Health.

1.2 The Respondent has been employed as a counselor at Family Services in Seattle, Washington, since 2000. His primary duties are to conduct intake interviews lasting up to two hours, and to run two therapy groups for individuals classified as batterers.

1.3 Family Services is an agency that focuses primarily on domestic violence intervention (DV). The agency has established detailed policies and procedures for handling DV screenings and treatment. See Exhibits R 2-8.

1.4 DV treatment is not like ordinary mental health care. The possibility of an elevated risk to former victims, partners or children warrants special handling of cases involving DV. Deposition of Dr. Joan Zegree, pp. 57-58.

1.5 As part of its overall program offerings, Family Services provides a parenting program called Respectful Parenting. When applying to enter the Respectful Parenting program, the client must provide financial information and must undergo a lengthy application process, which covers a myriad of topics including history of family relationships/abuse; substance abuse; criminal/legal history; mental health issues; medical history; and an assessment of lethality (whether the client thinks about killing himself or others). See Exhibits R-7, R-8, and R-10F.

1.6 Any person who comes to Family Services to sign up for the Respectful Parenting program is advised that the agency requires a DV screening before deciding whether to admit the person to the program. The Family Services policy manual states:

"If it is determined that a client has engaged in a pattern of intimate partner domestic violence, that client will need to complete a minimum of six months in the weekly phase of a domestic violence batterer's intervention program prior to entering into the Respectful Parenting Program." (Exhibit R-6).

1.7 After filing an initial application for the Respectful Parenting program, the client is assigned an intake interview date. The intake interview involves the signing of

releases and the completion of a lengthy intake interview. See Exhibits R-10G and R-10H. The releases signed by the client allow the interviewer to gather more information about the client so as to perform the DV screening.

1.8 For the DV screening, the intake interviewer reviews all the client forms, the notes from the intake interview, and all the information gathered pursuant to the signed releases, and recommends a course of treatment, including whether or not the client should undergo DV intervention. The intake interviewer confers with his or her supervisor regarding the recommendations made for the client.

1.9 In this case, Client A called Family Services in December 2006 and spoke to Ms. Rachel Griego. Ms. Griego is a Family Services' receptionist and a witness in this proceeding. She advised Client A that he could come into the office during intake hours, which ended at 3:00 p.m., to make an application and set-up an intake interview. She further advised him that he needed to bring with him certain items of information including his tax forms to verify his income for purposes of determining the amount he would be charged for services.

1.10 Client A came to the offices of Family Services on December 13, 2006, at 4:00 p.m., after the close of intake. He failed to bring with him the required tax information and behaved in an angry and intimidating way. (See Testimony of Rachel Griego.) Although he came to the office outside the normal hours for making applications for intake appointments, Client A expected to be accommodated. Family Services agreed to process his untimely request and scheduled his intake interview for January 4, 2007, with the Respondent.

1.11 On December 13, 2006, Family Services also provided Client A with a State of Washington Required Disclosure Statement (Disclosure Statement) (Exhibit R-10C); asked him to sign a Financial Agreement for the Respectful Parenting Program (Exhibit R-10E); and required him to fill out a Respectful Parenting Program Questionnaire (Exhibit R-10F).

1.12 The Disclosure Statement provided to Client A identified the Respondent as a registered counselor (his prior credential) rather than as a mental health counselor (his current credential); provided the Respondent's registered counselor credential number; stated his educational background; stated his experience; identified methods of treatment and the fee structure; and provided an overview of possible course of treatment. The Disclosure Statement bears only the signature of the Respondent, dated December 13, 2006.

1.13 At the intake interview on January 4, 2007, Client A signed several releases. The Respondent advised Client A that the purpose of the releases was to assist the Respondent in performing a DV screening. Two of the releases named Client A's ex-wife and his current wife. In addition, Client A signed releases for Family Court Services, Robin Brooks (a mental health counselor he had seen); Family Medicine of Redmond; and Supervised Visitation in Venice, Florida.

1.14 The release form pertaining to Client A's ex-wife (Exhibit R-10G) is an agency form, not a form specifically developed by the Respondent. The form clearly names Client A's ex-wife as the individual to whom the release was directed. Below the block that provides the ex-wife's contact information is a series of check-offs pertinent to

the release in question. Checked off on Client A's ex-wife's release is the category which allows: "Any verbal/written exchange of information relevant to my program participation."

1.15 During the intake process, Client A stated that he came to Family Services for a parenting program in an effort to convince the Florida court that he was "sane" so as to improve the prospects of obtaining from the court more lenient visitation privileges with his son [REDACTED] then 4 years old. Exhibit 10H. Client A and his ex-wife, the mother of [REDACTED] had divorced and she had moved to Florida with [REDACTED] in 2003.

1.16 As a result of the information provided by Client A during the intake interview and obtained pursuant to the releases signed by Client A, Client A demonstrated a pattern of abusive behavior typical of domestic violence perpetrators. This pattern included:

- A. admission that he yelled/screamed/used a raised voice with his ex-wife, sometimes in the presence of his son (Exhibit R-10H);
- B. admission that his current wife is afraid of his reactions, but he doesn't know why (Id);
- C. stalking behavior demonstrated by checking up on his ex-wife by means of internet spyware (Exhibit R-10J and Client A's testimony);
- D. being the respondent in an unrelated harassment petition brought in the King County District Court, East Division (Exhibit R-10K);
- E. being subject to a court's domestic violence protection order requiring Client A to avoid contact with his ex-wife and limiting him to quarterly

parental visits with his son only as arranged through Children & Families Supervised Visitation Program in Venice, Florida (Exhibit R-10O); and,

F. engaging in intimidating and manipulative behavior with the Florida Visitation Program (Exhibits R-10L and R-10M).

1.17 As a result of his information gathering, the Respondent determined Client A would have to engage in the Men's Domestic Violence Intervention Program for six months before entering the Respectful Parenting Program. The Respondent's supervisor approved his recommendations. Exhibits R-10S and R-10T. On January 29, 2007, the Respondent communicated these recommendations to Client A by telephone. Exhibit R-10S.

1.18 Client A declined to attend the Program as recommended because it was too long in duration and Client A's court date for revision of his parenting plan was coming up soon.

1.19 In February 2007, the Respondent sent a copy of his Client Progress Report, which described his contact and evaluation of Client A, along with a cover letter indicating that Client A had not been accepted into the Domestic Violence Intervention Program, to Client A's ex-wife and his current wife. In doing this, the Respondent followed accepted domestic violence procedures. (Testimony of Sandra Lowe and Dr. Joan Zegree and Exhibits 10U-W).

II. CONCLUSIONS OF LAW

2.1 The Secretary of Health (and by designated authority, the Presiding Officer) has jurisdiction over the Respondent and the subject of this proceeding. Chapter 18.130 RCW.

Standard of Proof.

2.2 The standard of proof in a professional disciplinary hearing is clear and convincing evidence. *Ongom v. Dept. of Health*, 159 Wn.2d 132 (2006), cert. denied 127 S. Ct. 2115 (2007).

Alleged Violations.

2.3 The Uniform Disciplinary Act, chapter 18.130 RCW, provides definitions of what conduct, acts, or conditions constitute unprofessional conduct. In this case, unprofessional conduct was alleged under several sections of RCW 18.130.180:

- (1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

...

- (7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

- (20) The willful betrayal of a practitioner-patient privilege as recognized by law.

The Statement of Charges further alleges that the Respondent violated RCW 18.130.180(7) by virtue of his violation of RCW 18.225.100 which requires:

A person licensed under this chapter must provide clients at the commencement of any program of treatment with accurate disclosure information concerning the practice, in accordance with rules adopted by the department, including the right of clients to refuse treatment, the responsibility of clients to choose the provider and treatment modality which best suits their needs, and the extent of confidentiality provided by this chapter. The disclosure information must also include the license holder's professional education and training, the therapeutic orientation of the practice, the proposed course of treatment where known, financial requirement, and such other information as required by rule. The disclosure must be acknowledged in writing by the client and license holder.

and RCW 18.225.105, which states in part:

A person licensed under this chapter shall not disclose...any information acquired from persons consulting the individual in a professional capacity when the information was necessary to enable the individual to render professional services to those persons except:

- (1) With the written authorization of that person, or in the case of death or disability, the person's personal representative;

- ...
- (5) To any individual if the person licensed under this chapter reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the individual or any other individual; however there is no obligation on the part of the provider to so disclose.

Did the Respondent commit a violation of the practitioner-patient confidentiality under RCW 18.130.180(7) and RCW 18.225.105?

Was Client A a Participant in Family Services DV Program?

2.4 The Program claims that the Respondent was not a "participant" in the Family Services DV Program and, therefore, rules requiring the Respondent to notify Client A's ex-wife are inapplicable.

2.5 Chapter 388-60 WAC consists of rules governing Domestic Violence Perpetrator Treatment Program Standards. The rules define a "Participant" as "the client enrolled in domestic violence perpetrator treatment program." WAC 388-60-0015. As such, the rules would seem to require "enrollment" in treatment as a pre-condition to being considered a participant. However, WAC 388-60-0065, governing steps the treatment program must take to address victim safety, requires the treatment program to:

"Notify the victim of each program participant within fourteen days of the participant being accepted or denied entrance to the program that the participant has enrolled in or has been rejected for treatment services."

(Emphasis added).

WAC 388-60-0145, which addresses the release a participant is required to sign, indicates the participant must sign:

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL ORDER

Page 13 of 22

Master Case No. M2008-117251

"(1) A release allowing the treatment program to notify the victim and/or the victim's community and/or legal advocates that the perpetrator has been accepted or rejected for treatment."

2.6 Thus, it is clear that while the definition section of the rules contemplates that a participant will be enrolled in a DV program, taking the rules as a whole, a "participant" may include someone who has been assessed for participation but been rejected by the program. It would logically follow that someone who, after undergoing the intake/screening process, refused to engage in the recommended treatment, would similarly be considered a "participant."

2.7 Moreover, taking Chapter 388-60 WAC as a whole, an overarching concern of the rule is the protection of potential victims of the DV perpetrator. As indicated above, WAC 388-60-0065 not only requires notification of the victim if the participant has been rejected for treatment services (WAC 388-60-0065(2)), it also requires the program to document its efforts to notify the victim (WAC 388-60-0065(3)).

2.8 Findings of Fact 1.3 to 1.17 demonstrate that Client A was a participant in Family Services' domestic violence assessment and intervention.

Were the Releases Client A Signed Sufficient to Allow an Exchange of Information between the Respondent and Client A's Ex-wife?

2.9 RCW 18.225.105 does not establish any content requirements for releases, but rather indicates only that confidential information may be disclosed if there is "written authorization of that person [the client]." The Program claims that the releases Client A signed did not meet the legal requirements for such releases under

WAC 388-60-0145, and that they could not legally provide for an exchange of information between the Respondent and the person or entity named in the release.

2.10 WAC 388-60-0145 requires:

"For a treatment program to conduct case monitoring and periodic safety checks, the program must require all participants to sign the following releases which must remain in effect for the duration of the client's treatment:

- (1) *A release allowing the treatment program to notify the victim and/or the victim's community and/or legal advocates that the perpetrator has been accepted or rejected for treatment;*
- (2) A release allowing the program to provide the victim with periodic reports about the perpetrator's participation in the program;
- (3) A release allowing the current domestic violence perpetrator treatment program access to information held by all prior and concurrent treatment agencies, including domestic violence perpetrator treatment programs, mental health agencies, and drug and alcohol treatment programs;
- ...
- (5) A release for the program to notify any person whose safety appears to be at risk due to the participant's potential for violence and lethality. This includes, but is not limited to:
 - (a) The victim;
 - (b) Any children;
 - (c) Significant others;
 - (d) The victim's community and legal advocates; or
 - (e) The police.

(Emphasis added).

2.11 WAC 388-60-0145(1) clearly contemplates that the release would allow two-way communication between the agency and the named individual because it: 1) would allow the named individual to release information to the agency/counselor; and 2) would allow the program to notify the victim that the perpetrator has been accepted or rejected for treatment. Moreover WAC 388-60-0145(5) contemplates notification by the program of any person whose safety appears to be at risk, including the victim.

2.12 Finding of Fact 1.14 demonstrates that the release form for Client A's ex-wife conformed to WAC 388-60-0145, because it allowed for two-way communication between the Respondent and the person named in the release, Client A's ex-wife. However, the provision for two-way communication under WAC 388-60-0145 speaks chiefly of "notification." The question becomes whether the Respondent acted properly in attaching a copy of the Client Progress Report to the notification he sent Client A's ex-wife, indicating Client A refused to enter the DV program.

2.13 The Client Progress Report goes beyond notification to providing an explanation of what transpired with Client A as a result of the intake process. Nevertheless, given the evidence of risks related to domestic violence, Client A's own pattern of abusive behavior, the immanence of the Florida court proceeding, and the broad scope of the language in the release for Client A's wife, the Program failed to show by clear and convincing evidence that the Respondent violated RCW 18.225.105 when he sent Client A's ex-wife the Client Progress Report. Moreover, the Client Progress Report falls into the category of information that may be divulged by the

practitioner when he believes that disclosure would avoid or minimize imminent danger to another. RCW 18.225.105(5) and WAC 388-60-0145(5). The Department has not shown by clear and convincing evidence that the Respondent violated RCW 18.130.180(7) and RCW 18.225.105.

Did the Respondent willfully betray the practitioner-patient privilege under RCW 18.130.180(20)?

2.14 RCW 18.130.180(20) requires willful betrayal of a practitioner-patient privilege as recognized by law.

2.15 As concluded above, the Respondent did not violate confidentiality requirements associated with DV treatment programs. Even if it were concluded that the Respondent did violate confidentiality with respect to Client A, Findings of Fact 1.3-1.19 demonstrate that the Respondent did not do so willfully.

Did the Respondent's State Required Disclosure Form violate RCW 18.225.100?

2.16 RCW 18.225.100 identifies certain required pieces of information that must be incorporated into a State Required Disclosure Form (Disclosure Form). The purpose of requiring such information as the accurate identification of the counselor's credential is, in part, to allow the client to verify the credential. The purpose of the other disclosure requirements is to include in one document all the information that serves to protect the client rather than assuming the client is informed by piecemeal dissemination of the information during the intake process.

2.17 The Respondent's Disclosure Form did not fully comply with all the information requirements identified in the statute. See Finding of Fact 1.12. It is not

enough that most of the information may have been conveyed orally, or by other forms, during the course of the intake process.

2.18 The Program has shown by clear and convincing evidence that the Respondent's Disclosure Form violated RCW 18.225.100.

Did the Respondent Violate RCW 18.130.180(1) by Committing an Act of Moral Turpitude?

2.19 The courts have defined moral turpitude under RCW 18.130.180(1) as "conduct indicating unfitness to practice in the profession." *Haley v. The Medical Disciplinary Board*, 117 Wn.2d 720, 742; 818 P.2d 1062 (1991).

2.20 As found above, the Program failed to show by clear and convincing evidence that the Respondent violated confidentiality requirements pertaining to his relationship with Client A. On that basis, the Respondent did not commit an act of moral turpitude under RCW 18.130.180(1).

2.21 The Program demonstrated by clear and convincing evidence that the Respondent's Disclosure Statement failed to conform to the legal requirements in RCW 18.225.100.

2.22 The Respondent's failure to maintain a Disclosure Statement that met the requirements of RCW 18.130.180(1) had no direct impact on his ability to counsel clients professionally and effectively. Rather it was the result of an unintentional failure to update the Disclosure Form. Thus the Respondent's provision of an out-of-date Disclosure Statement does not indicate his unfitness to practice in the profession.

2.23 The Respondent's violation of RCW 18.225.100 does not rise to the level of moral turpitude under RCW 18.130.180(1).

What Sanctions are Appropriate in light of the Respondent's violation of RCW 18.130.180(7) and RCW 18.225.100?

2.24 In determining appropriate sanctions, public safety must be considered before the rehabilitation of the Respondent. RCW 18.130.160. Upon a finding of unprofessional conduct, a broad range of sanctions is available. Id.

2.25 Chapter 246-16 WAC provides rules designed to promote consistency in sanctioning under RCW 18.130.160. However, the rules governing sanctions do not address sanctions applicable to this case.

2.26 The Program alleged that the Respondent violated RCW 18.130.180(7) as to unprofessional conduct rather than as to practice below the standard of care. See Department's Response to Respondent's Motion to Dismiss. The sanction guideline rules address only violations of practice below the standard of care. WAC 246-16-810.

2.27 If sanction schedules in the sanction rules do not address the specific misconduct committed, the disciplining authority "will use its judgment to determine appropriate sanctions." WAC 246-16-800.

2.28 The Program requested sanctions including probation, attendance at continuing education in the ethics of confidentiality; and a \$1,000.00 fine.

2.29 As concluded above, of all its alleged violations, the Program only proved the Respondent violated RCW 18.225.100 by failing to provide Client A with a legally complete Disclosure Statement. There was no evidence that Client A was harmed by the incomplete Disclosure Statement or that the Respondent intended to provide Client A with a legally deficient Disclosure Statement. Moreover, the Respondent amended his Disclosure Statement to bring it into compliance with the law. However,

there is a potential for harm in failing to provide all the required information in such a Statement. For example, proper identification of a counselor's credential might assist a client in obtaining useful information about the counselor's background or licensure. For that reason, imposition of a fine of \$100.00 is warranted. RCW 18.130.160(8).


III. ORDER

3.1 The Statement of Charges is dismissed as to all charges except violation of RCW 18.130.180(7) and RCW 18.225.100.

3.2 The Respondent must pay a fine of \$100.00 within 30 days of the issuance of this order.

3.3 Failure to Comply. Protecting the public requires practice under the terms and conditions imposed in this order. Failure to comply with the terms and conditions of this order may result in suspension and/or revocation of the Respondent's license after a show cause hearing. If the Respondent fails to comply with the terms and conditions of this order, the Secretary may hold a hearing. At that hearing, the Respondent must show cause why his license should not be suspended. Alternatively, the Secretary may bring additional charges of unprofessional conduct under RCW 18.130.180(9). In either case, the Respondent will be given notice and an opportunity for a hearing on the issue of non-compliance.

Dated this 24th day of June, 2009.



THEODORA MACE, Health Law Judge
Presiding Officer

CLERK'S SUMMARY

<u>Charge</u>	<u>Action</u>
RCW 18.130.180(1)	Dismissed
RCW 18.130.180(7)	Violated
RCW 18.130.180(20)	Dismissed
RCW 18.225.100	Violated
RCW 18.225.105	Dismissed

NOTICE TO PARTIES

This Order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate/national reporting requirements. If discipline is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either party may file a **petition for reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this Order with:

Adjudicative Service Unit
P.O. Box 47879
Olympia, WA 98504-7879

and a copy must be sent to:

Licensed Mental Health Counselor Program
P.O. Box 47852
Olympia, WA 98504-7852

The petition must state the specific grounds for reconsideration and what relief is requested. WAC 246-11-580. The petition is denied if the Presiding Officer does not respond in writing within 20 days of the filing of the petition.

A **petition for judicial review** must be filed and served within 30 days after service of this order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, the above 30-day period does not start until the petition is resolved. RCW 34.05.470(3).

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL ORDER

Page 21 of 22

Master Case No. M2008-117251

The order remains in effect while a petition for reconsideration or review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This order is "served" the day it is deposited in the United States mail. RCW 34.05.010(19).

For more information, visit our website at <http://www.doh.wa.gov/hearings>.